

## Appendix 2

### Joint Use Cooperative Agreement

COOPERATIVE JOINT USE AGREEMENT  
BY AND BETWEEN  
THE CITY OF ALAMEDA  
AND  
THE ALAMEDA UNIFIED SCHOOL DISTRICT

This cooperative joint use agreement (hereafter “the Agreement”) is entered into as of April 17, 2002 by and between the Alameda Unified School District (hereafter “the District”) and the City of Alameda (hereafter “the City”).

RECITALS

- A. In November 2000, California voters passed Proposition 14, the “California Reading and Literacy Improvement and Public Library Construction and Renovation Bond Act of 2000” (hereafter “the Act”).
- B. The Act authorized the State of California to issue bonds to provide grants to any city that is authorized to own and maintain a public library system to: acquire or construct new library facilities or add to existing ones; to acquire land on which library facilities will be built; to remodel or rehabilitate library facilities; to procure and/or install furnishings and equipment necessary to library operation; and/or to pay the fees of professional architects, engineers and others who participate in the planning and execution of any of these permitted purposes.
- C. In providing grants, the Act gives first priority to “joint use projects in which the agency that operates the library and one or more school districts have a cooperative agreement.” The Act requires that each grant recipient “provide matching funds from any available source in an amount equal to 35 percent of the costs” of the recipient’s project.
- D. In November, 2000 the voters of the City of Alameda passed Measure O, authorizing the City to issue up to \$10.5 million in general obligation bonds to fund improvements to the City’s Main Library and two branches. The bulk of the proceeds realized from the issuance of the bonds is intended by the City to provide the local match for state funding of between \$17 and \$20 million from the Act.
- E. Guided by the Required Elements for Joint Use Cooperative Agreements set forth at Section 24440: Appendix 2 of Title 5 of the California Administrative Code, the City and the District have reached agreement concerning various joint use projects that will be described in this Agreement and the attachments to it. It is the mutual intent of the District and the City to enter into this Joint Use Agreement both to memorialize their mutual understandings and to provide a basis for the City’s application to the State Librarian for grant funds under the Act.

- F. In designing Joint Venture Projects to meet community needs, the Library and the District held nine meetings over eight months. During the discussions, each party learned a great deal about the needs and resources of the other. The parties recognize that Alameda's K-12 students will be best served when the District and the City Library work together to meet their educational needs; neither party can meet these needs alone. The City and the District recognize that each makes a unique contribution to this partnership, and that by working together public will be leveraged to a greater extent than if each works alone.

Based on the foregoing, the District and the City agree as follows:

1. Scope of Joint Venture Projects – Hours of Service

The City and the District hereby agree to participate jointly in the following Joint Venture Projects, as provided more particularly in the "Scope of Work" attached to this Agreement as Exhibit 1 and by this reference made fully a part of this Agreement.

- (a) Homework Center Tutoring
- (b) Temporary Public Library Special Collections for Students
- (c) District-Supplied Core Curriculum Textbooks in All [City] Public Libraries
- (d) Student Internet Docents
- (e) SAT Prep Sessions at the Library
- (f) Microsoft Office User (MOUS) Certified Trainers
- (g) Shared Electronic Resources
- (h) NCS Learn Networked Computers

Unless otherwise specifically provided otherwise in Exhibit 1, all the foregoing services shall be provided during the City's regular hours of public library service. Those hours are 9:00 a.m. to 9:30 p.m. on Mondays and Wednesday; 9:30 a.m. to 5:30 p.m. on Tuesdays, Thursdays, Fridays and Saturdays; and 1:00 p.m. to 5:00 p.m. Sundays.

2. Staffing and Volunteers

In conducting the programs described in Section 1, District-provided services will be provided by the following District staff in the following numbers, as more particularly set forth in Exhibit 1: (a) 1 K-6 Literacy Coach, (b) 1 Public Information Officer, (c) certificated teachers (d) 3 Head Counselors, (e) Regional Occupational Program staff, (f) 1 Director of Technology Services, (g) 1 Director of Elementary Education, (h) 1 Director of Secondary Education,

In conducting the programs described in Section 1, City-provided services will be provided by the following City staff in the following numbers, as more particularly set forth in Exhibit 1: (i) 7 Library Reference Desk staff, (j) 6 Library Children's Services staff, (k) 2 Catalogue Librarians, (l) 10 Library Technicians, (m) 1 Young Adult Librarian, (m) 4 Supervising Librarians.

Services provided respectively by District and City staff will be supplemented by volunteers as more particularly set forth in Exhibit 1.

3. Locations of the Joint Use Project

The joint use project will be located at the City's main library located at 2310 Lincoln Ave., Alameda CA 94501.

4. Ownership of and Responsibility for Site, Facilities, Furnishings, Equipment and Library Materials

All sites, facilities, furnishings and equipment and library materials will be owned by the City. The District will own textbooks provided to the program as more particularly set forth in Exhibit A.

The City shall be responsible for the operation and maintenance of the facilities and equipment utilized in all joint use projects as well as the care of all library materials.

5. Term of the Joint Use Agreement - Modifications

The City and the District are committed to providing joint use library services consistent with the intent of this Agreement for at least 20 years.

The term of this Agreement shall commence on the date first set forth above, and shall terminate on June 30, 2022. The term of this Agreement may be extended by the mutual written agreement of the City and the District.

During the initial term of this Agreement and all extensions thereto, the parties may modify the Agreement's terms by an executed written amendment in each case, approved by the District's Board of Education and the City Council.

6. Field Act Applicability to Projects Described in the Agreement

This section sets forth the joint statement of the City and the District concerning the application of the "Field Act" (Ed. Code Sects. 39140 et seq. and 39210 et seq.) to any joint use project set forth in this Agreement, as provided by Section 20440: Appendix 2 of Title 5 of the Administrative Code. Section 20440: Appendix 2 requires that the parties provide (a) "a statement that the project will or will not be subject to the Field Act; and (b) the rationale for determination regarding the Field Act applicability."

The parties to this Agreement hereby jointly state as follows:

- (a) The projects set forth in this Agreement are not subject to the Field Act.
- (b) The rationale for the foregoing statement is that:
  - (i) no building that will be utilized for any such project is located on school property; and

- (ii) neither any building nor any portion of any building that will be utilized for such project provides space for required educational purposes for more than 24 pupils enrolled in kindergarten or any of the grades 1 to 12 at any one time in the building.

In preparing this section 6, the parties have relied upon the January 11, 2001 letter to Dr. Kevin Starr from Mr. Stephan Castellanos, FAIA, State Architect, attached to this Agreement as Exhibit 2.

7. Funding of Projects Set Forth in the Agreement

Except as otherwise provided in this Section 7 the City shall provide all funding necessary for all joint projects described in this Agreement from its General Fund, including but not limited to salaries and benefits for City staff as set forth in Section 2 and Exhibit 1; and acquisition, operation and maintenance of necessary facilities, equipment and materials.

The District shall provide funding for the work of its staff, as described in Section 2 and Exhibit 1, from its General Fund, acquisition of text materials as described in Exhibit 1, and printing and distribution costs, as and where more particularly set forth in Exhibit 1.

8. Required Acknowledgement and Incorporation

The City and the District hereby acknowledge and incorporate Education Code Section 19999 and Section 20440(e)(3) of Title 5 (Library Bond Act Regulations) of the Administrative Code.

9. Hold Harmless and Indemnification

City shall indemnify, defend and hold harmless the District, its employees, officers, and agents, from and against any and all claims arising from the conduct of City business or from any activity, work or things done, permitted or suffered by City, its officers, employees, agents, contractors, or assigns, arising from a breach or default in the performance of any obligation of City' part to be performed under the terms of the lease or arising from any negligence of City, and from and against any and all costs, attorney's fees, expenses and liabilities incurred in the defense of any such claim or any such action or proceeding brought thereon; and in case any action or proceeding be brought against the District, City shall defend the same at City' expense.

District shall indemnify, defend and hold harmless the City, its employees, officers, and agents, from and against any and all claims arising from the conduct of District business or from any activity, work or things done, permitted or suffered by District, its officers, employees, agents, contractors, or assigns, arising from a breach or default in the performance of any obligation on District's part to be performed under the terms of the lease or arising from any negligence of District, and from and against any and all costs, attorney's fees, expenses and liabilities incurred in the defense of any such claim or any

such action or proceeding brought thereon; and in case any action or proceeding be brought against the City, District shall defend the same at District's expense

10. Public Liability Insurance

Each party to this Agreement shall self-insure or shall keep in force during the term of this lease, at its own expense, public liability insurance in reputable companies and through reputable brokers to protect against liability to the public incident to the use of, by or resulting from any acts of omissions of its part, the liability under said insurance to be not less than one million dollars (\$1,000,000) for any one person injured, or one million dollars (\$1,000,000) for any one accident, and one million dollars (\$1,000,000) for property damage. Each party shall furnish the other a certificate of insurance in a reasonably satisfactory form naming the other party, its employees, officers, directors and agents as additional insureds on said policy or self-insurance.

11. Workers' Compensation Insurance

Each party to this Agreement shall procure and maintain Workers' Compensation Insurance as required by Labor Code Section 3700.

12. Non-Assignment

Neither party to this Agreement shall assign its rights or privileges under the Agreement, or any interest therein, nor shall either shall attempt to confer any of its privileges under the lease to any third party.

13. Waiver

The waiver by either party of any breach of term, covenant or condition herein contained shall not be deemed a waiver of such term, covenant, condition or any subsequent breach of the same or of any other term, covenant or condition herein contained.

14. Reasonable Attorney's Fees

In the event that either party to this Agreement shall commence any legal action or proceeding, including an action for declaratory relief, against the other by reason of the alleged failure of the other to perform or keep any term, covenant or condition of the Agreement by it to be performed or kept, the party prevailing in said action or proceeding shall be entitled to recover, in addition to its court costs, a reasonable attorney's fee to be fixed by the court, and such recover shall include court costs and attorney's fee on appeal, if any. As used herein, the term "party prevailing" means the party in whose favor final judgment is rendered.

15. Notice

Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or by first-class mail as follows:

District: Director, Elementary Education  
Alameda Unified School District  
2200 Central Ave.  
Alameda, CA 94501

City: Library Director  
Office of the City Clerk  
Alameda City Hall, Room 380  
2263 Santa Clara Ave.  
Alameda, CA 94501

16. Entire Agreement

This Agreement expresses the entire agreement between the parties and may not be amended except by a writing signed by both parties.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the day and year first written above.

ALAMEDA UNIFIED SCHOOL DISTRICT

By: \_\_\_\_\_  
Alan K. Nishino  
Secretary, Board of Education

City of Alameda

By: \_\_\_\_\_  
James C. Flint  
City Manager